

§§ 1207.161–1207.169 [Reserved]

§ 1207.170 Compliance procedures.

(a) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(b) *Allegations of discrimination in the adjudication of a Board case.* (1) When a party to a case pending before any of the Board's judges believes he or she has been subjected to discrimination on the basis of disability in the adjudication of the case, the party may raise the allegation in a pleading filed with the judge and served on all other parties in accordance with 5 CFR 1201.26(b)(2).

(2) An allegation of discrimination in the adjudication of a Board case must be raised within 10 days of the alleged act of discrimination or within 10 days from the date the complainant should reasonably have known of the alleged discrimination. If the complainant does not submit a complaint within that time period, it will be dismissed as untimely filed unless a good reason for the delay is shown. The pleading must be clearly marked "5 CFR part 1207 allegation of discrimination in the adjudication of a Board case."

(3) The judge to whom the case is assigned shall decide the merits of any timely allegation that is raised at this stage of adjudication, and shall make findings and conclusions regarding the allegation either in an interim order or in the initial decision, recommended decision, or recommendation. Any request for reconsideration of the administrative judge's decision on the disability discrimination claim must be filed in accordance with the requirements of 5 CFR 1201.114 and 1201.115.

(4) If the judge to whom the case was assigned has issued the initial decision, recommended decision, or recommendation by the time the party learns of the alleged discrimination, the party may raise the allegation in a petition for review, cross petition for review, or response to the petition or cross petition. The petition for review, cross petition for review or response to

the petition or cross petition must be clearly marked "5 CFR part 1207 allegation of discrimination in the adjudication of a Board case."

(5) The Board shall decide the merits of any timely allegation that is raised at this stage of adjudication in a final decision.

(c) All complaints of discrimination on the basis of disability in programs and activities conducted by the agency, except for those described in paragraphs (a) and (b) of this section, shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part, or authorized representative of such person, may file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of a person or member of a class of persons claiming to be aggrieved may be made by any person, agency or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal Employment Opportunity (EEO Director), Merit Systems Protection Board, 1615 M Street, NW., Washington DC 20419, or e-mailed to equalopportunity@mspb.gov, within thirty-five (35) calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by facsimile or e-mail is the date the facsimile or e-mail is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The agency shall extend the time period for filing a complaint upon a showing of good cause. For example, the agency

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shall extend this time limit if a complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits.

(3) *Acceptance of complaint.* (i) The agency shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If the EEO Director receives a complaint that is not complete, he or she shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of his or her receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall so inform the complainant.

(4) Within 60 days of the receipt of a complete complaint for which it has jurisdiction, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) Any appeal of the EEO Director's initial decision must be filed with the Chairman of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 by the complainant within 35 days of the date the EEO Director issues the decision required by § 1207.170(c)(4). The agency may extend this time for good cause when a complainant shows that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the date it is received by the Chairman. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by

commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked "Appeal of Section 504 Decision" and must contain specific objections explaining why the person believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) A timely appeal shall be decided by the Chairman unless the Chairman determines, in his or her discretion, that the appeal raises policy issues and that the nature of those policy issues warrants a decision by the full Board. The full Board shall then decide such appeals.

(7) The Chairman shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Chairman determines that he or she needs additional information from the complainant, he or she shall have sixty (60) days from the date he or she receives the additional information to make his or her determination on the appeal.

(8) The time limit stated in paragraph (c)(2) may be extended by the EEO Director to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General. The time limit stated in paragraph (c)(5) may be extended by the Chairman to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General.

(9) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

(d) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

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(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

[70 FR 24293, May 9, 2005, as amended at 73 FR 6834, Feb. 6, 2008]

§§ 1207.171–1207.999 [Reserved]

PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

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AUTHORITY: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

SOURCE: 65 FR 5412, Feb. 4, 2000, unless otherwise noted.

Subpart A—Jurisdiction and Definitions

§ 1208.1 Scope.

This part governs appeals filed with the Board under the provisions of 38

U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, as amended, or under the provisions of 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105-339. With respect to USERRA appeals, this part applies to any appeal filed with the Board on or after October 13, 1994, without regard as to whether the alleged violation occurred before, on, or after October 13, 1994. With respect to VEOA appeals, this part applies to any appeal filed with the Board which alleges that a violation occurred on or after October 31, 1998.

§ 1208.2 Jurisdiction.

(a) *USERRA*. Under 38 U.S.C. 4324, a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with a provision of that chapter (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In general, the provisions of chapter 43 of title 38 that apply to Federal employees guarantee various reemployment rights following a period of service in a uniformed service, provided the employee satisfies the requirements for coverage under that chapter. In addition, chapter 43 of title 38 prohibits discrimination based on a person's service—or application or obligation for service—in a uniformed service (38 U.S.C. 4311). This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.

(b) *VEOA*. Under 5 U.S.C. 3330a, a preference eligible who alleges that a Federal agency has violated his rights under any statute or regulation relating to veterans' preference may file an appeal with the Board, provided that he has satisfied the statutory requirements for first filing a complaint with the Secretary of Labor and allowing the Secretary at least 60 days to attempt to resolve the complaint.